



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MPA/165570

PRELIMINARY RECITALS

Pursuant to a petition filed April 20, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a telephone hearing was held on May 27, 2015.

The issue for determination is whether the respondent correctly modified petitioner's request for Personal Care Worker (PCW) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Redact, RN (written appearance only)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Brown County.
2. Petitioner has diagnoses of hemiplegia on the right side, diabetes, hypertension, hyperlipidemia and depression. See, Exhibit 2.

3. Petitioner suffered a stroke two years ago, and another in 2014.
4. Petitioner's daughter is her personal care worker, and testified that she assists her with dressing, grooming, transfers, and toileting (incontinence).
5. Petitioner has chronic pain on her right side, and is prescribed hydrocodone.
6. On January 30, 2015, the respondent received Prior Authorization request # [Redact] from petitioner's provider requesting PCW services 42 hours per week, and 5.25 hours per week travel time. Exhibit 2.
7. On March 11, 2015, the respondent modified the Prior Authorization request approving 7 hours of PCW time per week, and approving the requested travel time. The approval was established for 26 weeks, based upon respondent's determination that petitioner's progress merited review prior to the usual 1 year period. Exhibit 3.

DISCUSSION

Personal care services are "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Wis. Admin. Code, §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3. At hearing on the issue of modification of a PA request, it is the burden of petitioner or the provider to establish the need and appropriateness of the requested services. Petitioner has done neither based on this record.

The respondent approved 7 hours of PCW services each week for the petitioner. To reach this figure the respondent initially reviewed the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the respondent's reviewer can then adjust to account for variables missing from the screening tool's calculations. The respondent also reviewed medical records from 2014 and 2015, and then adjusted the tool's results based upon Department maximum time allowances and considerations of petitioner's medical records.

The reason that the DHCAA now is looking closely at PCW requests is evident in a case such as this one. Petitioner's daughter did not provide specific times necessary for providing the PCW services, but instead

testified that more time was needed than was approved because of her assessment of petitioner's medical status. Her testimony contradicted the medical records, which demonstrate that petitioner responded favorably to her post-stroke therapy regimens, and that her left and right sides were functioning equally. Specifically, medical records indicate that petitioner was able to get in and out of bed independently; petitioner's daughter testified that petitioner cannot get out of bed without help. Medical records indicate that petitioner requires minimal assistance with dressing; petitioner's daughter testified that she assists her mother with dressing daily. The medical records repeatedly reference symmetric neurological function; the petitioner's daughter testified that petitioner's right and left side do not function equally.

A problem that arises where family members are the personal care workers is that they may take more time to do care tasks due to extra carefulness or inexperience. The medical records in this case simply do not reflect the testimony received at hearing. The record does not provide any explanation for this wide disparity, and I cannot conclusively determine which version of the petitioner's abilities is accurate. The respondent is constrained in its evaluation of Prior Authorization requests by the medical records it receives. The record before me does not effectively rebut the respondent's determination here to modify the Prior Authorization request.

Petitioner's daughter should be aware that if petitioner's provider can show a medical need for more time, it can always request an amendment for additional time with evidence to show the need for the additional time. Due to the contradictory testimony/documentation here, petitioner is advised to share the respondent's May 6, 2015, correspondence (Exhibit 3) with her providers. However, based upon the evidence before me I cannot conclude that the reduction to 7 PCW hours per week was wrong.

CONCLUSIONS OF LAW

The DHCAA's modification of the request for PCW hours was appropriate based upon petitioner's medical needs and the Department's policies for PCW approval.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 3rd day of July, 2015.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 3, 2015.

Division of Health Care Access and Accountability